

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Anthony David Harper,

Plaintiff,

v.

Nancy A. Berryhill,

Defendant.

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16-CV-229  
Decision and Order

On March 17, 2016, the plaintiff commenced this action. Docket Item 1. On December 20, 2016, this Court referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(B). Docket Item 15. On December 12, 2016, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 14; on March 20, 2017, the defendant responded and cross-moved for judgment on the pleadings, Docket Item 20; and on April 10, 2017, the defendant replied, Docket Item 21. On May 23, 2018, Judge Foschio issued a Report and Recommendation (“R&R”) finding that the plaintiff’s motion should be granted and that the defendant’s motion should be denied. Docket Item 24. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1);

Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Foschio's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Foschio's recommendation to grant the plaintiff's motion and deny the defendant's motion.

For the reasons stated above and in the R&R, the plaintiff's motion for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 14, is GRANTED; the defendant's cross-motion for judgment on the pleadings, Docket Item 20, is DENIED; the decision of the Commissioner is VACATED; and the matter is REMANDED for further administrative proceedings consistent with Judge Foschio's R&R. The defendant shall complete all proceedings related to the plaintiffs claim within 120 days of the date of this order. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: July 8, 2018  
Buffalo, New York

**s/Lawrence J. Vilardo**  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE